



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/162971

PRELIMINARY RECITALS

Pursuant to a petition filed December 31, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on March 05, 2015.

The issue for determination is whether the petitioner was overissued FS from March-May 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Kathy Jones, ESS
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. Petitioner received FS in Waukesha County from at least January 2014-May 2014.
3. Petitioner was advised of his reporting requirements through a January 6, 2014 and a February 17, 2014 notice of decision. See Exhibits 1 and 2.

4. Petitioner did not report to the FS agency that he began receiving unemployment benefits in January 2014, until April 2014.
5. After the petitioner reported the unemployment benefits to the FS agency on April 28, 2014, the FS agency referred the matter for an FS overpayment.
6. On October 7, 2014 the agency issued a Notice of FS Overissuance to the petitioner stating that he had been overpaid FS from March-May 2014 in the amount of \$1032 because petitioner failed to report unemployment income which put him over the income limit for FS.

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4)(i); *FS Handbook*, §7.3.1.2, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken by the agency was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the agency's evidence of correct action. To determine an overpayment amount, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii). The FS program in Wisconsin does specifically direct agencies to count unemployment benefits as unearned income for FS determination purposes. See *FS Handbook*, §4.3.4.2., subsec. 6.

Petitioner did not contest any of the amounts of income budgeted, or the substance of the overpayments calculated. Rather, he wanted to argue the unfairness of the advice he allegedly received from an unnamed FS worker who told him he would not be responsible for the overpayment and that he could spend the remaining FS on his card.

FS rules require recovery of the overpayment regardless of who made the mistake and regardless of whether it was intentional. Thus, even if the agency knew of the unemployment benefits but did not budget them in the FS calculations, the agency could seek recovery of the overpaid FS. His argument about the advice he received is an equitable argument. However, it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Thus, even if I were to believe his uncorroborated arguments about the advice, I cannot adjust the amount owed as petitioner requests.

Based on all the above, I must find that the agency established its claim for overpayment. The petitioner may be able to offset the overpayment with any current FS benefits for which he may be eligible, as opposed to making cash payments or having taxes intercepted. He can also contact the agency to see if he can set up a repayment plan that is reasonable. At this time the Public Assistance Collection Unit can be reached at 1-800-943-9499.

CONCLUSIONS OF LAW

The petitioner was overissued FS from March-May 2014.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 19th day of March, 2015

\sKelly Cochran
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 19, 2015.

Waukesha County Health and Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability